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ABSTRACT

This report discusses the implications of recent court decisions that invalidate local school finance systems on grounds of denial of equal protection. The author examines the school financing options available to Mississippi in the light of these recent State court decisions and in view of a forthcoming U. S. Supreme Court decision on the subject. (JF)

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THE COURTS, THE SCHOOLS, AND THE DOLLAR

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About a year ago, on August 30, 1971, the California Supreme Court, in Serrano v. Priest,[1] held that the level of spending for a child's publicly financed elementary or secondary education may not be a function of wealth. Shortly afterward, a federal court in Minnesota, in Van Dusartz v. Hatfield,[2] spoke in similar terms. In general, these courts held that a state may apply whatever rational and noninvidious criteria for spending for public education it chooses; however, a state is forbidden only to permit either school district wealth or family wealth to affect spending.

Following closely on the heels of these cases, a three-judge federal panel in Texas ruled in the Rodriguez v. San Antonio Independent School District[3] case on December 23, 1971, that the present financing system in Texas, similar in several respects to that of Mississippi, violated the Fourteenth Amendment of the U. S. Constitution, and the court

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[1] Serrano v. Priest, 5 Cal. 3rd 584, 487 Pac. 2d 1241 (1971).

[2] Van Dusartz v. Hatfield, F. Supp. (No. 3-17 Civ. 243, decided October 12, 1971, U.S.D.C. D. Minn.).

[3] Rodriguez v. San Antonio Independent School District, F. Supp. (W.D. Texas 1971).

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struck down Article 7, Section 3 of the Texas Constitution. This latter action removed the possibility of the local property tax as a major source of income for the operation of local public schools and eliminated the possibility of local bond issues. The court also eliminated Chapter 16 of the Texas Education Code, which includes the minimum foundation program, and directed the chief state school officer and the State Board of Education to reallocate the funds available for financial support of the public schools in Texas, including those funds derived from the local property tax.

Only a few days later, on January 19, 1972, a state court in New Jersey in Robinson et al. v. Cahill et al.,[4] basing its ruling on provisions of the constitution of New Jersey, held similarly.

In the weeks since then, there has been a flurry of activity around the country. Suits were quickly filed in a number of other states, in both federal and state courts, seeking rulings similar to those in the first four cases. The Rodriquez case was appealed to the United States Supreme Court and the Supreme Court has agreed to take the matter up in its fall session.

At about the same time, the report of the National Educational Finance Project--a federally-funded widespread study of the financing of public education in all the states--

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[4]Robinson et al. v. Cahill et al., Superior Court of New Jersey, Law Division-Hudson County, Docket No. L-180704-69, January 19, 1972.

was completed. On March 6, 1972, the report of the President's Commission on School Finance was issued.[5]

As a result of this activity, according to the Education Commission of the States, over 100 study groups in 49 states have begun investigation of state school financing programs.[6] At least one such group is active in Mississippi at the present time.

On February 15, 1972, Dr. Milton Baxter, Executive Director of Education and Training, acting on behalf of Governor William Waller, made the initial appointments to the Governor's School Finance Study Group. Additional appointments were made a few days later, such that the membership is as follows: Chairman, Dr. Frank Lovell, State Department of Education, Vice-Chairman, Dr. W. B. Thompson, Superintendent, Greenville; Secretary, W. S. Griffin, State Department of Education; Otis Allen, Superintendent, Leflore County Schools; Dr. Bob Anderson, Professor, University of Southern Mississippi; Dr. E. H. Bedenbaugh, Professor, University of Southern Mississippi; Arch Dalrymple, representing the Mississippi School Boards Association; Dr. Merrill Hawkins, Dean, Mississippi State University; Herbert Hoff, Superintendent, South Pike County Consolidated School District;

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[5]Dr. W. B. Thompson, Superintendent of the Greenville Municipal Separate School District, was a member of this Commission.

[6]Hawaii, because of its centralized state system of schools and financing, apparently could not be affected by the rulings issued to date by the various courts.

Dr. Charles Holladay, Superintendent, Tupelo; Mrs. Etoile Hopkins, classroom teacher, Forest; C. A. Johnson, Executive Secretary, Mississippi Education Association; Dr. Lamar Moody, Professor, Mississippi State University; Dr. Clyde Muse, Superintendent, Meridian; Dr. John Phay, Professor, University of Mississippi; Dr. Jerry Robbins, Professor, University of Mississippi; and H. M. Thompson, representing the Mississippi Teachers Association.

The initial meeting of this group was on March 7, 1972, with several consultants present. Various meetings of the full group and various subcommittees have been held from time to time since then. The following progress report was issued by Dr. Lovell, the Chairman, to Governor Waller on August 9, 1972:

> The assignment given to the Study Group was to recommend alternate methods of financing public education in the State. Originally, we set a completion date of August 31, realizing that such an early completion might be somewhat too ambitious. Such has proved to be the case, and now, somewhat more realistically, we anticipate that the Study will be complete sometime in October.
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> There follows a list of the accomplishments of the Study Group to date:
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> I. The determination was made that the Study should be comprised of three phases.
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> A. Determination of the schope of the educational program to be provided
>
> B. Determination of the cost factors of the different programs
>
> C. Determination of the method or methods of financing the programs.

II. Committees were formed to make tentative determinations as outlined in A, B, and C above.

A. The "scope" committee has identified the several facets of the educational program to be provided. Data are being collected to determine the numbers of students which should be included in each program.

B. The "Cost Factors" committee has refined a data collection instrument which is now being utilized to collect the pertinent data necessary to fulfill the responsibility of this committee.

C. The "methods" committee is in the process of collecting information which will be used to make its recommendations.

III. Data are being collected by the Planning and Evaluation section of the State Department of Education, and by the Finance and Statistics Office of the Division of Administration and Finance, State Department of Education. It is anticipated that the collection of data will be complete about the first of September. The major committees will then be able to finalize their reports and recommendations for presentation to the entire Study Group. The Study Group will then act on these recommendations, and will formulate a report to the Governor and State Superintendent. It is anticipated that throughout the writing of the report, we will be assisted by the National Educational Finance Project staff at the University of Florida.

Perhaps a Fall completion will be advantageous, because by that time, we may have a U. S. Supreme Court ruling on the school finance case which it has agreed to hear in the Fall.

Dr. Lovell's reference to a ruling from the United States Supreme Court this fall is indicative of concern facing the Governor's School Finance Study Group, political leaders of the state, the Legislature, the State Department of Education, administrators of public schools in the state, the tax-paying public, and patrons of the public schools of the state.

Constitutional lawyers and Supreme Court watchers are divided in their projections of what may happen. On the one hand, given the precedents established and the trend of other rulings in the recent past, the Supreme Court may sbustantially or completely uphold the Rodriguez ruling. If so, there may be many parallels to the court actions since 1954 in desegregation cases, except that states, rather than local school districts,will be on the defensive. If this be the case, then the present financing arrangement for public education in Mississippi including not only the local taxing structure and the distribution of state funds through the Minimum Foundation Program, but possibly even the operations of the State Textbook Purchasing Board, the Educational Finance Commission, the Junior college districts, local bonding procedures, and other agencies, will probably have to be revised, either through action of the courts or the Legislature.

On the other hand, given the present make-up of the Supreme Court, it is possible that the Rodriguez ruling will be overturned or substantially modified. Even if this should occur, however, there are those who argue that it would be educationally (and even morally) sound for a state to implement the major provisions of the Serrano and Rodriguez rulings. Those who hold this position may seek, through the courts or through the Legislature, to modify the present financial patterns.

If it should become necessary or desirable to alter the present method of financing the public schools of Mississippi, what are the dimensions of the problem?

Since July 1, 1954, the financing of the Mississippi Foundation Program has been handled jointly by the state and local school districts according to a complicated scheme which has been amended frequently. According to the rulings thus far, and provided there is some rational basis for the distribution of monies, the major concern of the courts is not so much with the method of distribution as it is with the effect of the distribution at the local level. Contrary to popular opinion, the courts have not eliminated the possible use of the local property tax as a source of funds; it is, however, the effect of this method of taxation that is under attack in the courts at this time.

The wealth of this state is, of course, unevenly distributed, ranging from $18,533.33 assessed valuation per pupil in the Jackson Municipal Separate School District to $2,184.90 in the Bolivar #6 Consolidated District.[7] Current expenditures per pupil in average daily attendance range from $871.96 in the Drew Municipal Separate School District to $356.72 in the Clinton Municipal Separate School District.

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[7]All data taken from a State Department of Education publication, Rankings of Mississippi School Districts, 1970-1971.

However, it appears that the courts are not requiring equal per pupil expenditures, state-wide, provided some other rational criterion is applied.

For example, in Robinson the New Jersey court stated:

> This is not to suggest that the same amount of money must be spent on each pupil in the state. The differing needs of pupils would suggest the contrary. In fact, the evidence indicates that pupils of low socio-economic status need compensatory education to offset the natural disadvantages of their environment.

Among the many possible valid bases for spending different amounts upon different pupils are the following:

1. Level of tax effort of the child's district. (This ranges from 32.00 mills for current operation in the Poplarville Municipal Separate School District [1971-1972] to 13.00 mills in the Wilkinson County School District.)
2. Intellectual gifts of the child
3. Educational disadvantages
4. Age differences
5. Curriculum differences
6. Area cost differences
7. Municipal overburden in the cities
8. Transportation needs (This ranges from $82.30 per pupil in the Yazoo County School District [1970-1971] to 0 in several municipal separate school districts.)
9. Compensation for prior economic discrimination
10. Experimentation

Public schools in Mississippi receive substantial sums from federal sources, ranging from 47.89% of all revenue in the Leflore County School District (1970-71) to 0 in the Clinton Municipal Separate School District with a state average of 22.66%. Many people have commented on the fact that spending variations are not as great within the school systems of Mississippi as they are between Mississippi and high expenditure states such as New York and California. Therefore, they argue, the federal government should reduce variations between states before becoming concerned with variations within states. However, the President's Commission has recommended that "each state assume responsibility for determining and raising on a state-wide basis, the amount of funds required for education . . ." and that "State government assume responsibility for financing substantially all of the non-Federal outlays for public elementary and secondary education . . . [with] a general purpose Federal incentive grant that would reimburse States for part of the costs of raising the State's share of total State and local educational outlays above the previous years' percentage."

Further, in the Rodriguez case, the court held that (a) federal funds did not make up the difference in expenditures among school districts in Texas, (b) that federal funds are special purpose funds and legally cannot make up the difference and (c) that federal efforts were not relevant in

any case, as the acts of one governmental unit could not justify the unconstitutional acts of another, and Texas was acting in an unconstitutional manner within its own sphere of government. Thus it appears that a federal "rescue' is not a feasible solution to the problem.

If a change is necessary or desirable, what options are available to the State of Mississippi and what options are not likely to meet legal tests? The National Educational Finance Project tested all of the commonly used or proposed plans of state support and drew the following conclusions:

1. State funds distributed by any model tested provide for some financial equalization but some finance models provide more equalization than others. Even the flat grant model provides for some equalization despite the fact that under this model each district, regardless of wealth or necessary variations in unit costs, receives the same amount of state money per pupil or other unit. This is due to the fact that the less wealthy districts receive more state aid per pupil than the revenue per pupil they contribute to the state treasury.

2. A flat grant model by which state funds are apportioned on the basis of a flat amount per pupil unit or other unit which does not take into consideration necessary variations in unit costs or variations in wealth per unit of need of local districts provides the least financial equalization for a given amount of state aid of any of the state-local support models tested.

3. A flat grant model under which necessary cost variations per unit of need are provided for but variations in the per pupil wealth of local districts are ignored provides for more equalization than the flat grant model described in 2 above but it does not equalize financial resources as well as the equalization models providing for cost differentials and variations in wealth.

4. Equalization models under which necessary unit cost differentials are provided for in computing the cost of the educational program equalized and which take into consideration differences in the wealth of local school districts in computing state funds needed by a district are the most efficient models examined for equalizing financial resources in states which use a state-local revenue model for financing schools.

5. In equalization models, the greater the local effort required in proportion to the legal limit of local taxes for schools, the greater the equalization.

6. In equalization models, the greater the local tax leeway above the required local tax effort required for the support of the foundation program, the less the equalization.

7. Complete equalization is attained only under full state funding or under an equalization model which requires school districts to contribute the full legal limit of local taxes to the cost of the foundation program.

8. The higher the percent of school revenues provided by the state, the greater the equalization of financial resources under both flat grant and equalization models but there is always more equalization under an equalization model than a flat grant model for any given amount of state funds apportioned.

9. As full state funding is approached (100 percent of school revenue provided by the state) the difference between the equalizing potential of flat grant models and equalization models begins to disappear, assuming that cost differentials are provided for under each model. For example, with 90 percent or more state funding of schools, the differences between flat grant models and equalization models in equalizing financial resources would not be significant but the equalization models would always be slightly superior until full state funding is reached.

10. As the percent of local revenue is increased, the possibility of equalizing financial resources decreases.

11. A complete local support model provides for no equalization whatsoever.

12. The higher the percent of state funds, provided in relation to local revenue, the greater the progressivity of the tax structure for school support.

13. The higher the percent of federal funds provided in relation to state and local revenues the greater the progressivity of the tax structure for school support. This is due to the fact that federal taxes are on the average more progressive than state taxes and state taxes are generally more progressive than local taxes.

14. Many states can increase the progressivity of state taxes by increasing the proportion of state revenue obtained from relatively progressive taxes.

15. A state support model which provides incentives for increasing local taxes by increasing state funds allocated to local districts in proportion to increases in local tax effort tends to disequalize educational opportunity in a state beca use the educational opportunities for children are made dependent upon the willingness of their parents to vote for local taxes for schools.[8]

As the leaders and citizens of Mississippi await the ruling of the Supreme Court, we must keep the following statement from the National Educational Finance Project in mind:

> The basic legal principal which has been established by the courts is that the quality of a child's education should be dependent upon the wealth of the entire state rather than the wealth of the district in which he resides. Further extension of the "equal protection" principle relates to the concept that varying educational programs are required to meet the individualized educational needs of different pupils, that these programs have different levels of cost, and that these pupils are not uniformly distributed among districts within a state; therefore, the cost differential approach must be incorporated into state school support programs before the goal of "equal protection" is completely attained.

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[8] R. L. Johns and Edgar L. Morphet, Planning School Finance Programs, Gainesville, Florida: National Educational Finance Project, 1972, pp. 56-58.

Finally, it is possible that courts in the future may hold with Robinson that "education serves too important a function to leave it also to the mood--in some cases the low aspirations--of the taxpayers of a given district, even those whose children attend schools in the district."

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[9] Ibid. p. 77.